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JUL 17 2006

In re Application of :  
Gass et al. :  
Application No. 09/929,236 :  
Filed: August 13, 2001 :  
Attorney Docket No. SDT 307 :

**OFFICE OF PETITIONS**

**ON PETITION**

This is a decision on the petition under 37 CFR 1.181 to withdraw the holding of abandonment, filed March 24, 2005.

The petition to withdraw the holding of abandonment is **Dismissed**.

Any request for reconsideration should be filed within **TWO MONTHS** of the mailing date of this decision in order to be considered timely. 37 CFR 1.181(f). This time period may not be extended pursuant to 37 CFR 1.136.

This above-identified application became abandoned for failure to timely file a complete reply to the non-final Office Action of December 22, 2003. An amendment was filed on April 15, 2004. In response to the amendment a Notice of Non-Compliant Amendment (37 CFR 1.121) was mailed on April 29, 2004 which set an extendable reply period of one month. A reply to the Notice of Non-Compliant Amendment was not received. This application became abandoned on May 30, 2004. A Notice of Abandonment was mailed on March 18, 2005.

Petitioner asserts that the Notice of Non-Compliant Amendment mailed April 29, 2004 was never received. Petitioner contends a second amendment received in the Office on July 7, 2004 was not in response to the Notice of Non-Compliant Amendment. The purpose of the second amendment was to defer double patenting rejection in a co-pending application. In support, petitioner has provided a copy of what appears to be the front copy of a file jacket.

There is a strong presumption that the Notice was properly mailed to the address of record. This presumption may be overcome by a showing that the Notice was not in fact received. The showing required to establish the failure to receive an Office communication must include a statement from the practitioner stating that the Office

communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.<sup>1</sup> The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Notice may have been lost after receipt rather than a conclusion that the Notice was lost in the mail.

Petitioner has failed to provide a copy of the docket records. Petitioner should submit docket records from April 29, 2004 to May 29, 2004 on renewed petition.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

By facsimile: (571) 273-8300

By delivery service:  
(FedEx, UPS, DHL, etc.) U.S. Patent and Trademark Office  
Customer Service Window,  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3215.



Charlema R. Grant  
Petitions Attorney  
Office of Petitions

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<sup>1</sup>M.P.E.P. § 711.03(c); See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).